

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

| | | |
|----------------------|---|-----------------------------|
| BAVARIAN NORDIC A/S, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. 05-614-SLR |
| |) | |
| ACAMBIS INC. and |) | |
| ACAMBIS, PLC, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

**PLAINTIFF BAVARIAN NORDIC'S SUPPLEMENTAL
SUBMISSION PURSUANT TO LOCAL RULE 7.1.2(c)**

Plaintiff, Bavarian Nordic A/S (“Bavarian Nordic”), by and through their undersigned attorney and pursuant to the Local Rule 7.1.2(c), respectfully submits the following to address a recent event that Bavarian Nordic believes moots Acambis Inc.’s and Acambis plc’s (collectively “Defendants”) Motion to Stay. *See* Docket Item (“D.I.”) 12.

Defendants argue in their motion to stay that the claims asserted in this action and the unfair methods of competition and unfair acts in the importation of articles claim [19 U.S.C. § 1337(a)(1)(A)] pending before the U.S. International Trade Commission (“ITC”) are, in fact, the same claim, as they all involve Bavarian Nordic’s claim to proprietary rights in MVA strains and MVA-related trade secrets. D.I. 12 at 5-9. Thus, Defendants assert that this action is subject to either a mandatory stay under 28 U.S.C. § 1659(a) or a discretionary stay pursuant to this Court’s inherent discretion.

On April 14, 2006, however, the ITC dismissed without prejudice Bavarian Nordic’s 19 U.S.C. § 1337(a)(1)(A) claim, insofar as it related to Bavarian Nordic’s assertion of

proprietary rights in MVA-related trade secrets.¹ On April 17, 2006, the ITC dismissed without prejudice any allegations relating to tortious conversion of MVA strains at the ITC under Nordic's 19 U.S.C. § 1337(a)(1)(A), indicating that such claims were not part of the investigation as framed in the notice of investigation.² The ITC action, in which the evidentiary hearing (a.k.a. trial) has just been completed, now only relates to Bavarian Nordic's patent claims.

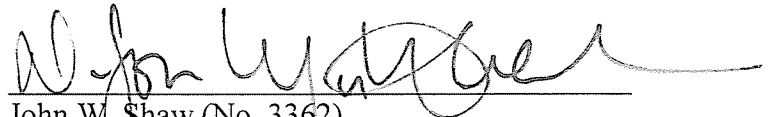
Because Defendants' entire argument is based on the concurrent nature of these now-dismissed ITC claims, we respectfully submit that Defendants' Motion to Stay is now moot.

Respectfully submitted,

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Dated: May 25, 2006



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¹ See *Certain Modified Vaccinia Ankara ("MVA") Viruses and Vaccines and Pharmaceutical Compositions Based Thereon*, Inv. No. 337-TA-550, Order No. 26 (Apr. 14, 1006), attached hereto as Exhibit A.

² See *Certain Modified Vaccinia Ankara ("MVA") Viruses and Vaccines and Pharmaceutical Compositions Based Thereon*, Inv. No. 337-TA-550, Order No. 27 (Apr. 17, 1006), attached hereto as Exhibit B.

CERTIFICATE OF SERVICE

I, D. Fon Muttamara-Walker, hereby certify that on this 25th day of May, 2006, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of Court using CM/ECF which will send electronic notification of such to the following:

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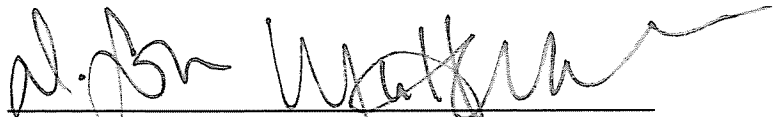
Additionally, I hereby certify that on May 25, 2006, I caused true and correct copies of the foregoing document to be served on the following counsel of record in the manner indicated below:

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